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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of

RICHARD BOTT II  
(Assignor)

and

WESTERN COMMUNICATIONS, INC.  
(Assignee)

For Assignment of Construction  
Permit of Station KCVI(FM),  
Blackfoot, Idaho

MM DOCKET NO. 93-155

File No. BAPH-920917GO

To: Administrative Law Judge  
Arthur I. Steinberg

**MASS MEDIA BUREAU'S**  
**OPPOSITION TO PETITION TO INTERVENE**

1. On July 21, 1993, Radio Representatives, Inc. ("RRI"), filed a Petition to Intervene in the above-captioned proceeding pursuant to Section 1.223(b) of the Commission's Rules. The Mass Media Bureau submits the following comments in opposition.

2. RRI was an applicant in the proceeding in which the construction permit for KCVI(FM) was awarded to Richard Bott II ("Bott"). However, although RRI refers to itself, at p. 2, as "a competing applicant," the fact is that the earlier comparative

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proceeding has become final. Radio Representatives, Inc. v. FCC, 926 F. 2d 1215 (D.C. Cir. 1991). Thus, as the Commission specifically held in the Hearing Designation Order in this proceeding, 8 FCC Rcd 4074 (1993) ("HDO"), RRI lacks standing here. Moreover, it is well settled that a former applicant is not entitled to intervene solely on the basis of its earlier party status. Denton FM Radio, Ltd., 56 RR 2d 171 (Rev. Bd. 1984). Yet this is precisely what RRI is arguing when it claims that it is peculiarly well suited to assist the Commission in this case because it is a former competing applicant in another case.

3. Similarly, RRI's intervention is not justified merely because its petition to deny may have been instrumental in bringing the issues designated here to the Commission's attention. Were such automatic party status required, the Commission would have awarded RRI party status in the HDO.

4. RRI has also failed to show how its participation will assist the Commission. "A broad, undifferentiated desire to participate does not satisfy the strictures of the intervention rule . . . ." Listeners' Guild, Inc., 813 F.2d 465, 470 (D.C. Cir. 1989). Likewise, RRI's contention that its participation is necessary to ensure that the issues are fully explored is unavailing. It is well established that the Bureau is charged with taking an independent role in Commission proceedings in the

public interest to insure the development of a full and complete record. See, Pressley v. FCC, 437 F.2d 716, 719 (D.C. Cir. 1970), 20 RR 2d 2045, 2049.

5. Finally, we submit that RRI's interest in this case is based on purely private concerns. RRI has requested specification of the following additional issues:

To determine in light of the facts disclosed in Bott's opposition to the petition to deny filed in the instant proceeding whether his integration pledge is too tenuous and impermanent to warrant credit.

To determine in light of the evidence adduced pursuant to the foregoing issue whether further action on the captioned application should be stayed and a petition for recall of mandate and for remand should be filed with the U.S. Court of Appeals for the D.C. Circuit pursuant to the Court's December 23, 1993 (sic) Order.

These issues leave no doubt that RRI's intentions are to reopen the comparative contest which has already concluded and not to assist in the resolution of the instant proceeding. Indeed, the second requested issue contemplates a stay of the instant proceeding.

6. The relief which RRI is actually seeking would contravene a ruling of the Court of Appeals. As set forth at n. 3 of the HDO, the Court of Appeals denied RRI's request for a remand "without prejudice to refiling, by either party, upon completion of the assignment proceeding before [the Commission]." Radio Representatives, Inc. v. FCC. No. 90-1227 (D.C. Cir.


7. The instant Petition to Intervene appears to be an attempt to obtain indirectly the remand which has been thus far denied to RRI. RRI must not be permitted to use this proceeding for such purely private gains.

8. For the reasons set forth in the foregoing comments, the Bureau opposes RRI's Petition to Intervene.

Respectfully submitted,  
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July 30, 1993

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 30th day of July, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Petition to Intervene"** to:

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